



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

January 31, 2023

CERTIFIED MAIL: 7018 1830 0001 6172 7172

Pacific Surimi – Newport, LLC
c/o Robert J. Preston, Registered Agent
707 SW Washington St.
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-WR-2022-025

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,500 for discharging pollutants to waters of the state in excess of the limits established in the wastewater disposal permit for your facility located at 623 SW Bay Boulevard in Newport, Oregon. DEQ sets permit pollutant limits at levels necessary to protect public health and the environment. By exceeding these limits, you degraded the quality of Oregon waters.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-6762

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a portion of the penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

Pacific Surimi – Newport, LLC
Case No. WQ/I-WR-2022-025
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If you have any questions, please contact Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jon Gasik, DEQ
Ranei Nomura, DEQ
Accounting, DEQ
Aaron Courtney, Stoel Rives LLP, 760 SW Ninth Ave., Suite 3000, Portland, OR 97205

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
PACIFIC SURIMI – NEWPORT, LLC,) ASSESSMENT AND ORDER
an Oregon limited liability company,)
Respondent.) CASE NO. WQ/I-WR-2022-025

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS OF FACT

1. At all relative times Respondent operated a wastewater treatment collection, treatment and disposal system authorized by a National Pollutant Discharge Elimination System Permit (the Permit) issued and administered by DEQ.

2. The Permit authorized Respondent to construct, install, modify, or operate a wastewater collection, treatment, control and disposal system and discharge to public waters adequately treated wastewaters only in conformance with all the requirements, limitations, and conditions of the Permit.

3. Schedule A, Condition 1.b limits the monthly average loading of biochemical oxygen demand (BOD₅) in Respondent's effluent discharged from its Outfall 001A to 7,000 pounds per day (lbs/day).

4. Respondent discharged effluent from its Outfall 001A with the following monthly average BOD₅ load in lbs/day.

Month	BOD ₅ Loading	Percentage in excess of limit
June 2021	8,656	24%
July 2021	10,428	49%
August 2021	7,626	9%
September 2021	8,930	28%

October 2021	7,716	10%
July 2022	8,659	24%
August 2022	7,037	1%

5. Schedule A, Condition 1.c limits the monthly average loading of BOD₅ in the effluent Respondent discharges from its Outfall 001B to 7.5 lbs per 1,000 lbs of product processed.

6. In October 2018, Respondent discharged effluent from its Outfall 001B with a monthly average BOD₅ loading of 8.4 lbs per 1000 lbs of product processed, exceeding the limit by 19%.

7. Schedule A, Condition 1.b limits the monthly average loading of total suspended solids (TSS) in Respondent's effluent discharged from its Outfall 001A to 700 pounds lbs/day.

8. Respondent discharged effluent from its Outfall 001A with the following monthly average TSS loading in lbs/day.

Month	TSS Loading	Percentage in excess of limit
September 2019	727	4%
June 2021	772	10%
July 2021	932	33%

9. Schedule A, Condition 1.b limits the daily maximum loading of TSS in Respondent's effluent discharged from its Outfall 001A to 1,400 pounds lbs/day.

10. On July 26, 2021, Respondent discharged effluent from its Outfall 001A with a daily TSS loading of 1434 lbs per day, exceeding the limit by 2%.

11. Schedule A, Condition 1.c limits the daily maximum loading of TSS in the effluent Respondent discharges from its Outfall 001B to a concentration of 5.3 lbs per 1,000 lbs of product processed.

12. Respondent discharged effluent from its Outfall 001B with the following daily TSS loading.

Date	TSS Loading	Percentage in excess of limit
August 24, 2018	9.2	74%
August 28, 2018	5.5	4%

13. Schedule A, Condition 1.c limits the monthly average loading of TSS in the effluent Respondent discharges from its Outfall 001B to 2.9 lbs per 1,000 lbs of product processed.

14. In August 2018, Respondent discharged effluent from its Outfall 001B with a monthly average TSS loading of 5.7 lbs per 1000 lbs of product processed, exceeding the limit by 97%.

15. Schedule A, Condition 1.c limits the daily maximum loading of oil and grease (O&G) in the effluent Respondent discharges from its Outfall 001B to 1.2 lbs per 1,000 lbs of product processed.

16. Respondent discharged effluent from its Outfall 001B with the following daily O&G loading.

Date	O&G Loading	Percentage in excess of limit
August 8, 2018	1.4	14%
August 16, 2018	1.8	50%
August 23, 2018	3.8	217%
August 28, 2018	2.7	125%

17. Schedule A, Condition 1.c limits the monthly average loading of O&G in the effluent Respondent discharges from its Outfall 001B to a concentration of 0.47 lbs per 1,000 lbs of product processed.

18. Respondent discharged effluent from its Outfall 001B with the following monthly average O&G loading in lbs per 1,000 lbs product processed.

Month	O&G Monthly Average Loading	Percentage in excess of limit
July 2018	0.84	79%
August 2018	2.41	413%
September 2018	1.29	64%

III. CONCLUSIONS

1. Respondent violated ORS 468B.025 by exceeding effluent limits for BOD₅ established in Schedule A, Condition 1 of its Permit. Specifically, Respondent discharged effluent that exceeded the permitted BOD₅ limits as described in Section II, Paragraphs 3-6 above. Those instances where Respondent exceeded the limit by 20 percent or more but less than 50 percent are Class II violations

1 pursuant to OAR 340-012-0055(2)(a)(A). Those instances where Respondent exceeded the limit by
2 less than 20 percent are Class III violations pursuant to OAR 340-012-0055(3)(b)(A). DEQ assesses a
3 \$1,700 civil penalty for these violations.

4 2. Respondent violated ORS 468B.025 by exceeding effluent limits for TSS established in
5 Schedule A, Condition 1 of its Permit. Specifically, Respondent discharged effluent that exceeded the
6 permitted TSS limits as described in Section II, Paragraphs 7-14 above. Those instances where
7 Respondent exceeded the limit by 50 percent or more are Class I violations pursuant to OAR 340-012-
8 0055(1)(k)(A). Those instances where Respondent exceeded the limit by 20 percent or more but less
9 than 50 percent are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Those instances
10 where Respondent exceeded the limit by less than 20 percent are Class III violations pursuant to OAR
11 340-012-0055(3)(b)(A). DEQ assesses a \$3,400 civil penalty for these violations.

12 3. Respondent violated ORS 468B.025 by exceeding effluent limits for O&G established in
13 Schedule A, Condition 1 of its Permit. Specifically, Respondent discharged effluent that exceeded the
14 permitted O&G limits as described in Section II, Paragraphs 15-18 above. Those instances where
15 Respondent exceeded the limit by 50 percent or more are Class I violations pursuant to OAR 340-012-
16 0055(1)(k)(A). Those instances where Respondent exceeded the limit by 20 percent or more but less
17 than 50 percent are Class II violations pursuant to OAR 340-012-0055(2)(a)(A). Those instances
18 where Respondent exceeded the limit by less than 20 percent are Class III violations pursuant to OAR
19 340-012-0055(3)(b)(A). DEQ assesses a \$3,400 civil penalty for these violations.

20 IV. ORDER TO PAY CIVIL PENALTY

21 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
22 hereby ORDERED TO: Pay a total civil penalty of \$8,500. The determinations of the civil penalties are
23 attached as Exhibits 1, 2 and 3 and are incorporated as part of this Notice.

24 If you do not file a request for hearing as set forth in Section V below, your check or money
25 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**
26 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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1 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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1/31/2023
Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 1 Failure to comply with the BOD₅ effluent limits of the Permit in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(a)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(c)(i) because the receiving water diluted Respondent's discharge by a factor of 10 or more.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) as Respondent has a Tier 2 industrial source permit.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent exceeded the BOD₅ monthly average concentration limit in October 2018 and the monthly average loading limit during June, July, August, September and October 2021 and July and August 2022 for a total of eight occurrences of the violation.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The BOD₅ limits are express conditions of Respondent's permit. By failing to take the action necessary to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information as to the compliance costs avoided or delayed by Respondent to arrive at a reasonable estimate of economic benefit.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$1,000 + (\$100 \times 7) + \$0 \\ &= \$1,000 + \$700 + \$0 \\ &= \$1,700 \end{aligned}$$

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 2 Failure to comply with the TSS effluent limits of the Permit in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(c)(i) because the receiving water diluted Respondent's discharge by a factor of 10 or more.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) as Respondent has a Tier 2 industrial source permit.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent exceeded the TSS daily maximum load limit on August 24 and 28, 2018, and July 26, 2021 and monthly average loading limits during August 2018, September 2020 and June and July 2021 for a total of seven occurrences of the violation.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The TSS limits are express conditions of Respondent's permit. By failing to take the action necessary to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information as to the compliance costs avoided or delayed by Respondent to arrive at a reasonable estimate of economic benefit.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 7) + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$

EXHIBIT 3

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 3 Failure to comply with the O&G effluent limits of the Permit in violation of ORS 468B.025(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(k)(A) and OAR 340-012-0145(4)(e).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(2)(c)(i) because the receiving water diluted Respondent's discharge by a factor of 10 or more.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(ii) as Respondent has a Tier 2 industrial source permit.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent exceeded the O&G daily maximum loading limit on August 8, 16, 24 and 28, 2018, and the monthly average loading limit during July, August and September 2018 for a total of seven occurrences of the violation.
- "M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. The O&G limits are express conditions of Respondent's permit. By failing to take the action necessary to comply with the limits, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ has insufficient information as to the compliance costs avoided or delayed by Respondent to arrive at a reasonable estimate of economic benefit.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 7) + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$